Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Orchard Circle Sdn Bhd & Ors and other appeals

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-01(A)-114–04 OF 2016, B-01(A)-131–04 OF 2016, B-01(A)-121–04 OF 2016 AND B-01(A)-122–04 OF 2016
DAVID WONG, HAMID SULTAN AND UMI KALTHUM JJCA
9 AUGUST 2017

Land Law — Acquisition of land — Declaration of acquisition — Form D under s 8 of the Land Acquisition Act 1960 ('the LAA') — Land administrator ('LA') handed down award at end of first land enquiry one year after Form D was published in gazette — Landowner's application to quash LA's award was heard and allowed by High Court almost eight years later — Court refused to declare acquisition exercise null and void but ordered LA to hold second land enquiry because landowner was not given chance to be heard at first land enquiry — Landowner did not appeal against High Court's decision not to declare acquisition exercise null and void but participated in second land enquiry contending that Form D had lapsed pursuant to s 8(4) of the LAA — Whether High Court's quashing of LA's award made pursuant to first land enquiry caused Form D to lapse — Whether Form D still valid for holding of second land enquiry — Whether estoppel and res judicata barred landowner from re-visiting argument of lapsed Form D as issue was never raised during proceedings to quash LA's award made pursuant to first land enquiry

Orchard Circle Sdn Bhd ('Orchard Circle') owned two parcels of land which it intended to develop into a commercial centre. In the course of developing the lands, Orchard Circle discovered that the authorities had taken steps to compulsorily acquire 19,123.77 sqmt ('the acquired land') covering the two parcels of land to build a highway. The Form D notice under the Land Acquisition Act 1960 ('the LAA') — declaring that the acquisition was for the purpose of constructing a highway — was published in the government *gazette* on 10 December 2001. In the land enquiry that followed, the land administrator ('LA') awarded Orchard Circle nominal compensation of RM1 on the basis Orchard Circle had surrendered a portion of the lands to the state authority. Orchard Circle disputed the award and sought to quash it by way of a judicial review application. The High Court decided that application almost eight years later. The court quashed the LA's award and ordered a second land enquiry to be held because, inter alia, Orchard Circle was not given an opportunity to be heard at the first enquiry. At the second land enquiry,

Orchard Circle argued that: (a) it had never surrendered any part of its lands to the state authority; and (b) following the quashing of first land enquiry award, the Form D had lapsed because the effect of the quashing was as if no award had been made within two years of the filing of the Form D as required by s 8(4) of the LAA. The LA rejected the argument about the Form D, awarded Orchard Circle nominal compensation of RM1 in respect of 17,284.67 sqmt of the acquired land which was surrendered to the state authority and awarded another RM514,948 as compensation for the balance 1,839.10 sqmt of the acquired land which was not surrendered. Orchard Circle filed a second judicial review application to: (i) quash the Forms D, G and H which were issued pursuant to ss 8(1), 14(1) and 16(1) of the LAA (and all proceedings following thereon) in respect of the land acquisition exercise; (ii) declare the acquisition and the taking into possession of the acquired land by any third party as null and void; (iii) declare that Orchard Circle was the lawful proprietor of the acquired land and entitled to possession thereof; (iv) order that a fresh land enquiry in respect of the acquired land be held after a fresh Form D had been issued; and (v) award Orchard Circle damages including punitive and/or aggravated and/or exemplary damages. The High Court allowed the judicial review application and granted the reliefs sought except the prayer for damages. The court agreed that the Form D had lapsed and ceased to have any effect with the quashing of the award that was made at the end of the first land enquiry and that as the second land enquiry and the second award by the LA was based on a lapsed Form D, they, too, did not have any legal effect. The instant appeals were against the decision of the High Court (Orchard Circle's appeal was against the dismissal of its prayer for damages). Apart from the appeals, both Orchard Circle and Sistem Lingkaran Lebuhraya Kajang Sdn Bhd had respectively applied to the LA to refer their objections against his award to the High Court for its determination in a land reference proceeding. By consent, the parties agreed to stay the land reference proceeding until the second judicial review application was finally disposed of. At the hearing of the instant appeals, it was argued that as Orchard Circle had participated in the second land enquiry it was barred by estoppel and res judicata from contending that the Form D had lapsed and was invalid. Orchard Circle had also failed to appeal against the High Court's refusal in the first judicial review application to declare the land acquisition exercise as null and void.

Held, dismissing Orchard Circle's appeal and allowing the other three appeals herein; setting aside the High Court's decision on the second judicial review application; declaring that the Form D issued on 10 December 2001 and all the acquisition proceedings flowing therefrom were valid; and ordering the parties to raise their objections concerning the LA's award in the second land enquiry at the land reference proceedings:

(1) Section 8(4) of the LAA talked of a Form D lapsing in a situation where

'the Land Administrator has not made an award under subsection 14(1) within the said period of two years'. The emphasis of s 8(4) of the LAA was to ensure that the LA performed his/her duty expeditiously. It did not mention or cater for a situation where the litigants, as in this case, sought redress in court which took more than two years to deal with the matter. Taking that into consideration, together with other provisions of the LAA, this court was of the view that s 8(4) was complied with when there was an award from the LA within the two year period from the date the Form D was published in the *gazette*. With that compliance, there was no question of the lapsing of the Form D. Section 8(4) was complied with when the first award was handed down on 24 December 2002 which was well within two years from the date (10 December 2001) of the Form D (see paras 28–29 & 31).

(2) The above interpretation was consistent with and reflected the intention of Parliament. The rationale and purpose of s 8(4) was to ensure that landowners whose lands were compulsorily acquired for public purpose were compensated adequately and quickly. Not to interpret s 8(4) in the manner set out would lead to mischiefs. The main mischief would be that the purpose of s 8(4), of a speedy award by the LA, would be defeated with legal challenges in court where cases were numerous and the disposal timeline of cases was not within the control of the LA. This court agreed with the High Court judge in the first judicial review application when he did not order the Form D to be re-issued and re-*gazetted* but had instead directed the second land enquiry to be held premised on the same Form D (see paras 26 & 32).

(3) In view of this court's opinion on s 8(4) of the LAA, it was unnecessary to deliberate on Orchard Circle's complaint regarding the High Court's refusal to award it damages (see para 35).

(4) The doctrines of estoppel and res judicata operated in the instant case to bar Orchard Circle from re-ventilating the issue of the lapsed Form D. Orchard Circle could have appealed, but did not appeal, against the High Court's refusal in the first judicial review application to invalidate the acquisition exercise. Orchard Circle could have raised the lapsed Form D issue in the first judicial review application but it never raised the issue until the second land enquiry. Despite Orchard Circle's contention that estoppel did not bite where there was a breach of the law in s 8(4) of the LAA, looking at the totality of the circumstances in this case, it was not 'just and equitable' to allow Orchard Circle to ventilate that issue in the second judicial review application (see paras 18–21).

[Bahasa Malaysia summary

Orchard Circle Sdn Bhd ('Orchard Circle') memiliki dua bidang tanah untuk tujuan dibangunkan menjadi pusat komersial. Sepanjang pembangunan

tanah-tanah itu, Orchard Circle mendapati bahawa pihak berkuasa telah mengambil langkah untuk mengambil alih secara wajib 19,123.77 meter persegi ('tanah yang diperoleh') yang meliputi dua bidang tanah untuk membina lebuhraya. Notis Borang D di bawah Akta Pengambilan Tanah 1960 ('APT') — mengisytiharkan bahawa pegambilalihan itu adalah bagi ujuan membina lebuhraya — telah disiarkan dalam *warta* kerajaan pada 10 Disember 2001. Dalam siasatan tanah yang diikuti selepas itu, Pentadbir Tanah ('PT') telah mengawardkan Orchard Circle pampasan nominal RM1 berdasarkan Orchard Circle menyerahkan sebahagian daripada tanah tersebut kepada pihak berkuasa negeri. Orchard Circle telah mempertikaikan award itu dan memohon untuk membatalkannya melalui permohonan semakan kehakiman. Mahkamah Tinggi membuat keputusan terhadap permohonan itu lebih kurang lapan tahun kemudian. Mahkamah telah membatalkan award PT itu dan memerintahkan siasatan tanah kedua dijalankan kerana, antara lain, Orchard Circle tidak diberikan peluang untuk didengar dalam sisatan pertama. Dalam sisatan tanah kedua, Orchard Circle berhujah bahawa: (a) ia tidak pernah menyerahkan mana-mana bahagian tanahnya kepada pihak berkuasa negeri; dan (b) berikutan pembatalan award siasatan tanah pertama, Borang D telah luput kerana kesan pembatalan adalah seolah-olah tiada award telah dibuat dalam tempoh dua tahun pemfailan Borang D sepertimana dikehendaki oleh s 8(4) APT. PT telah menolak hujah tentang Borang D itu, mengawardkan Orchard Circle pampasan nominal RM1 berkaitan 17,284.67 meter persegi tanah yang diambil alih yang diserahkan kepada pihak berkuasa negeri dan mengawardkan RM514,948 lagi sebagai pampasan untuk baki 1,839.10 meter persegi daripada tanah yang diambil alih yang tidak diserahkan. Orchard Circle telah memfailkan permohonan semakan kehakiman kedua untuk: (i) membatalkan Borang-Borang D, G dan H yang telah dikeluarkan menurut ss 8(1), 14(1) dan 16(1) APT (dan semua prosiding berikutnya) berkaitan amalan pengambilalihan tanah itu; (ii) mengisytihatkan pengambilalihan dan pengambilan milikan tanah yang diambil alih oleh mana-mana pihak ketiga sebagai terbatal dan tidak sah; (iii) mengisytiharkan bahawa Orchard Circle adalah pemilik sah tanah yang diambil alih dan berhak mendapat milikan tersebut; (iv) memerintahkan bahawa siasatan tanah baru berkaitan tanah yan diambil alih diadakan selepas Borang D baru dikeluarkan; dan (v) award ganti rugi Orchard Circle termasuk ganti rugi punitif dan/atau teruk dan/atau teladan. Mahkamah Tinggi membenarkan permohonan semakan kehakiman itu dan memberikan relif-relif yang dipohon kecuali permohonan untuk ganti rugi. Mahkamah bersetuju bahawa Borang D telah luput dan terhenti daripada mempunyai apa-apa kesan dengan membatalkan award yang dibuat di akhir siasatan tanah pertama dan oleh kerana sisatan tanah kedua dan award kedua oleh PT adalah berdasarkan Borang D yang telah luput, ia juga, tidak mempunyai apa-apa kesan undang-undang. Rayuan-rayuan ini adalah terhadap keputusan Mahkamah Tinggi (rayuan Orchard Circle adalah terhadap penolakan permohonannya untuk ganti rugi). Selain daripada rayuan-rayuan itu, kedua-dua Orchard Circle dan Sitem

Lingkaran Lebuhraya Kajang Snd Bhd masing-masing telah memohon kepada PT untuk merujuk bantahan mereka terhadap award beliau kepada Mahkamah Tinggi untuk penentuannya dalam prosiding rujukan tanah. Dengan persetujuan, pihak-pihak bersetuju untuk menggantung prosiding rujukan tanah itu sehingga permohonan semakan kehakiman kedua telah selesai sepenuhnya. Dalam perbicaraan rayuan-rayuan ini, ia dihujahkan bahawa oleh kerana Orchard Circle terlibat dalam siasatan tanah kedua ia dihalang oleh estopel dan res judicata daripada berhujah bahawa Borang D telah luput dan tidak sah. Orchard Circle juga gagal untuk merayu terhadap penolakan Mahkamah Tinggi untuk permohonan semakan kehakiman pertama bagi mengisytiharkan amalan pengambilalihan tanah itu adalah terbatal dan tidak sah.

Diputuskan, menolak rayuan Orchard Circle dan membenarkan tiga rayuan lain; menetepikan keputusan Mahkamah Tinggi ke atas permohonan semakan kehakiman kedua; mengisytiharkan bahawa Borang D yang dikeluarkan pada 10 Disember 2001 dan semua prosiding pengambilalihan yang bermula daripadanya adalah sah; dan memerintahkan pihak-pihak untuk menimbulkan bantahan mereka berkaitan award PT dalam siasatan tanah kedua dalam prosiding rujukan tanah:

(1) Seksyen 8(4) APT menyatakan Borang D luput dalam keadaan di mana 'the Land Administrator has not made an award under subsection 14(1) within the said period of two years'. Penekanan s 8(4) APT adalah untuk memastikan bahawa PT melaksanakan kewajipannya dengan cepat. Ia tidak menyebut atau memenuhi keadaan di mana litigan-litigan, sepertimana dalam kes ini, memohon tebus rugi daripada mahkamah yang mengambil lebih daripada dua tahun untuk mengendalikan perkara itu. Dengan mempertimbangkannya, bersama peruntukan lain APT, mahkamah ini berpandangan bahawa s 8(4) telah dipatuhi apabila terdapat award daripada PT dalam tempoh dua tahun dari tarikh Borang D disiarkan dalam *warta*. Dengan pematuhan itu, tiada persoalan tentang peluputan Borang D. Seksyen 8(4) telah dipatuhi apabila award pertama diberikan pada 24 Disember 2002 yang sememangnya dalam tempoh dua tahun dari tarikh (10 Disember 2001) Borang D itu (lihat perenggan 28–29 & 31).

(2) Tafsiran di atas adalah konsisten dengan dan menggambarkan niat Parlimen. Rasional dan tujuan s 8(4) adalah untuk memastikan pemilik tanah yang mana tanah telah wajib diambil alih untuk tujuan awam telah diberi pampasan secukupnya dan dengan cepat. Tidak mentafsirkan s 8(4) sepertimana ditetapkan akan membawa kepada masalah. Masalah utama adalah bahawa tujuan s 8(4), award segera oleh PT, akan menggagalkan cabaran perundangan di mahkamah di mana terdapat pelbagai kes dan garis masa pelupusan kes-kes bukan dalam kawalan PT. Mahkamah ini bersetuju dengan hakim Mahkamah Tinggi dalam

permohonan semakan kehakiman pertama apabila beliau tidak memerintahkan Borang D dikeluarkan semula dan diwartakan semula tetapi sebaliknya mengarahkan siasatan tanah kedua diadakan berpremiskan Borang D yang sama (lihat perenggan 26 & 32).

(3) Dalam pendapat mahkamah ini berhubung s 8(4) APT, ia tidak perlu membincangkan aduan Orchard Circle berhubung penolakan Mahkamah Tinggi untuk mengawardkannya ganti rugi (lihat perenggan 35).

(4) Doktrin estopel dan res judicata beroperasi dalam kes ini untuk menghalang Orchard Circle daripada menghidupkan semula isu Borang D yang telah luput. Orchard Circle mungkin boleh merayu, tetapi tidak merayu, terhadap penolakan Mahkamah Tinggi dalam permohonan semakan kehakiman pertama untuk membatalkan amalan pengambilalihan itu. Orchard Circle mungkin boleh menimbulkan isu Borang D yang luput dalam permohonan semakan kehakiman pertama tetapi ia tidak pernah menimbulkan isu itu sehingga siasatan tanah kedua. Walaupun hujah Orchard Circle bahawa estopel tidak menunjukkan dimana terdapat pelanggaran undang-undang dalam s 8(4) APT, melihat kepada keseluruhan keadaan dalam kes ini, ia tidak 'just and equitable' untuk membenarkan Orchard Circle membincangkan isu tersebut dalam permohonan semakan kehakiman kedua itu (lihat perenggan 18–21).]

Notes

For cases on declaration of acquisition, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2420–2422.

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (folld)

Henderson v Henderson [1843–60] All ER Rep 378; (1843) 3 Hare 100; (1843) 67 ER 313 (refd)

Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor [2016] 1 MLJ 544; [2015] 3 CLJ 861, FC (distd)

Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor [1997] 2 MLJ 565; [1997] 3 CLJ 305, FC (folld)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35, FC (refd)

Pengarah Tanah dan Galian Negeri Kedah & Anor v Emico Development Sdn Bhd [2000] 1 MLJ 257, CA (distd)

Legislation referred to

Interpretation Acts 1948 and 1967 s 17A
Land Acquisition Act 1960 ss 8, 8(1), (4), 14(1), 16(1), 37, Forms D, G, H, N

Appeal from: Application for Judicial Review No 25–59–09 of 2013 (High Court, Shah Alam)

Thangaraj Balasundram (Wong Kian Kheong) for the appellant.
Ambiga Sreenevasan (Shireen Selvaratnam and Lim Wei Jiet with her) (Sreenevasan) for the first respondent.
Naziah Mokhtar (Legal Advisor, Selangor State Legal Advisors Office) for the second and fourth respondents.
Zaliha bt Mohd Janis (Hani Aziza bt Ismail with her) (Senior Federal Counsel, Attorney General's Chambers) for the third and fifth respondents.

David Wong JCA (delivering judgment of the court):

INTRODUCTION

[1] There are four appeals before us and they are as follows:

(a) Civil Appeal No B-01(A)-114–04 of 2016 ('Appeal 114') filed by Sistem Lingkaran Lebuhraya Kajang Sdn Bhd (the fifth respondent in the High Court) ('SILK');

(b) Civil Appeal No B-01(A)-121–04 of 2016 ('Appeal 121') filed by Pentadbir Tanah Daerah Hulu Langat and Kerajaan Negeri Selangor (the first and third respondents in the High Court); ('the land administrator');

(c) Civil Appeal No B-01(A)-122–04 of 2016 ('Appeal 122') filed by Pengarah Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan) Negeri Selangor and Kerajaan Malaysia (the second and fourth respondents in the High Court) ('the Government of Malaysia'); and

(d) Civil Appeal No B-01(A)-131–04 of 2016 ('Appeal 131') filed by Orchard Circle Sdn Bhd ('Orchard Circle').

[2] Appeals 114, 121 and 122 relate to the High Court's decision dated 7 March 2016 granting the following reliefs:

(a) an order of certiorari to remove in to this court and quash the Form D dated 10 December 2001 issued under s 8(1) of the Land Acquisition

Act 1960 ('the LAA') and that was *gazetted* vide *Gazette* Notification No 1965 dated 20 December 2001 and all proceedings following there on for the acquisition of 9,005.08 sqmt of Lot 8630 and 10,118.69 sqmt of Lot 2630 both held under Geran No 30006 in the Mukim of Kajang, District of Hulu Langat, State of Selangor Darul Ehsan ('acquired land');

(b) an order of certiorari to remove in to this court and quash the Form G made on or about 20 April 2012 and the Form H dated 20 April 2012 issued under ss 14(1) and 16(1) respectively of the Land Acquisition Act 1960 and all proceedings following thereon for the acquisition of the acquired land;

(c) the following declarations:

(i) that the acquisition or taking in to possession of the acquired land by the respondents or any of them or any other party is null and void and of no legal effect; and

(ii) that Orchard Circle is the lawful proprietor of the acquired land and is entitled to possession there of;

(d) that a fresh inquiry is ordered inrespect of the acquired land after a fresh Form D has been issued; and

(e) no order as to costs.

[3] Appeal 131 relates to the High Court's decision dismissing Orchard Circle's prayers for damages and/or punitive, aggravated and/or exemplary damages to be paid to Orchard Circle.

BACKGROUND FACTS

[4] The factual matrix in this case is quite straight forward and largely undisputed and they are these. Orchard Circle is the owner of the acquired land in question and is in the business of property development. The acquired land is a part of two parcels of land, Lots 8630 and 2630 held under Geran No 30006 and situated in Kajang, Selangor ('lands'). The lands were earmarked to be developed into a commercial centre known as 'Pusat Dagangan Putra Kajang'.

[5] In the course of developing the lands, Orchard Circle discovered that part of the lands had been acquired by the relevant authority for the purpose of building a highway in the Kajang area, known as the SILK Highway. This led to Orchard Circle making various enquiries from the relevant authorities as to

A the status of the acquisition in terms of compensation.

[6] What has actually happened has been accurately summarised by learned counsel for SILK in a table form which we found useful and adopt with the appropriate amendments:

B

Date	Event
10 December 2001	Form D of the LAA was issued to compulsorily acquire the Lands for the purpose of the 'SILK Highway'.
C 24 December 2002	First land inquiry was held in relation to the acquisition. Orchard Circle was awarded nominal compensation of RM1 ('first land inquiry') on the basis that a portion of the lands have already been surrendered by Orchard Circle to the state authority. D Form H dated 24 December 2002 was issued in relation to the first land inquiry ('first award').
30 January 2003	Orchard Circle filed the first judicial review application for an order among others, to quash the first award ('first JR application').
10 December 2010	Shah Alam High Court ordered as follows in relation to the first JR application ('HC order for first JR application'): F (a) a certiorari to quash the first award; and (b) a mandamus to remit the matter back to the land office for a second land inquiry ('second land inquiry'). G In the oral grounds of the High Court's decision, the learned judge had found that Orchard Circle was not given a right to be heard at the first land inquiry.
17 February 2011–17 November 2011	The second land inquiry was held by the land administrator. H The second land inquiry proceeded with the calling of four witnesses, including Orchard Circle's own witness. At the second land inquiry, Orchard Circle raised the following issues: I (a) Form D had lapsed because no award made within two years of the date of Form D; and (b) Orchard Circle did not surrender any portion of the lands to the state authority.

20 April 2012	Land administrator ('LA') made the following decision: (a) the issue of a lapsed Form D did not arise as his award is but an extension of the first award when the High Court in the first judicial review ordered a fresh land inquiry; (b) 17,284.67 sqmt of the lands were surrendered by Orchid Circle to the state authority ('surrendered portion') and hence, LA awarded nominal compensation of RM1 for the surrendered portion; and (c) 1,839.10 square meters of the lands were not surrendered and the LA awarded compensation of RM514,948 ('second award').
30 May 2012	Orchard Circle filed the second judicial review application ('second JR application') and filed Form N in objection to the second award.

[7] Not happy with the second award, Orchard Circle filed the second JR application. As for the land reference proceedings in Form N filed by both Orchard Circle and SILK against the second award, it has been agreed between parties that they be consolidated and stayed until the final disposal of the second JR application.

THE HIGH COURT'S DECISION

[8] The learned judge's rationale for his decision was premised on his interpretation of s 8(4) of the LAA and this is what he said:

> vi. I find the provision of s 8(4) of the Land Acquisition Act clear and unambiguous where the validity of Form D is only for the period of two years from the date of its publications in the *gazette*. I adopt and follow the decision of the Court of Appeal case of *Pengarah Tanah dan Galian Negeri Kedah & Anor v Emico Development Sdn Bhd* [2000] 1 MLJ 257; [2000] 1 CLJ 86 which is binding on this court.
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> vii. Based on the facts of this case, since the original award of RM1 made on 24 December 2002 had been quashed and nullified by the High Court. The court order that a fresh inquiry is to be conducted is also clear. Subsequently the collector En Roslan proceeded with the inquiry and proceeded to make an award. Unfortunately, the second inquiry is tainted for breach of s 8(4) of the Land Acquisition Act wherein the Form D on which the second inquiry was premised upon had lapsed and has no legal effect.
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> viii. Following from the above, the second award made by the land administrator likewise suffers due to the breach of the s 8(4) of the Land Acquisition Act. The award made in the second inquiry has no legal effect and made beyond the scope of the Land Acquisition Act.

ix. Based on the above reasoning, I allowed prayer 1, 2 and 3 of the applicants applications for judicial review.

OUR GROUNDS OF DECISION

[9] One can see that the learned judge had merely gone through an exercise of giving a meaning of what s 8 meant. From the submission of learned counsel for Orchard Circle, it can be said that she had wholly adopted the interpretation of the learned judge. In essence, the exercise of the land inquiry by the land administrator must be completed before the expiry of the two-year life span given to Form D dated 10 December 2001 and in this case as the second award was only handed down on 20 April 2012, some nine years after the Form D expiry date, the whole acquisition exercise had become null and void.

[10] The issues before us are crystal clear and they are these:

(a) whether the learned judge was correct in finding that the land administrator's decision in respect of the second land inquiry contravened s 8(4) of the LAA? and

(b) whether the learned judge was correct in not awarding damages to the Orchard Circle?

SECTION 8(4) OF THE LAA

[11] Before we deliberate on the interpretation of s 8(4) of the LAA, we wish to deliberate on the contention raised by the respective learned counsel for SILK and the Government of Malaysia in the form of the application of legal principles of res judicata and estoppel to the factual matrix herein.

[12] This factual matrix is this. In the first JR application as set out in pp 452–459, Vol 2(3)/10 of the appeal record, Orchard Circle had applied for the following reliefs:

(1) an Order of Certiorari to remove into this Honourable Court and to quash the decision and award of compensation made by the Land Administrator of the District of Ulu Langat on 24.12.2002 for the acquisition of parts of Lots 8630 and 2630 held under Geran No 30006 in the Mukim of Kajang, District of Ulu Langat, State of Selangor Darul Ehsan;

(2) an Order of Mandamus directed to the Land Administrator to make an award of compensation in the sum of RM16,745,970.00 or in accordance

with the law and taking into account the Valuation Report dated 2.9.2002 to arrive at a just award in the circumstances of the case;

(3) alternatively to paragraph (2) above, that the Applicant be granted damages in the sum of RM16,745,970.00 based on the evidence before the Land Administrator namely the Valuation Report dated 2.9.2002;

(4) that alternatively to paragraphs (1), (2) and (3) above the Applicant be granted a Declaration that the acquisition or taking into possession of the Applicant's lands which form parts of Lots 8630 and 2630 held under Geran No 30006 in the Mukim of Kajang, District of Ulu Langat, State of Selangor Darul Ehsan by the State Authority and/or the Land Administrator of the District of Ulu Langat is null and void and of no legal effect; and

(5) that further to paragraph (4) above the Applicant be granted a Declaration that the Applicant is the lawful proprietor of the said lands and entitled to possession thereof or in lieu thereof damages;

(6) that the Applicant be at liberty to apply for all reliefs provided for under Paragraph 1 of the Schedule to the Courts of Judicature Act 1964 and Section 25 of the same Act.

[13] As alluded to by us earlier, the High Court in Shah Alam did not decide on the first JR application, which was filed on 30 January 2003–10 December 2010. The High Court allowed the first JR application premised primarily on the ground that Orchard Circle was not given a right to be heard, thus breaching the principle of natural justice. The consequent orders were only that the first award is quashed and that another land inquiry be held before another land administrator.

[14] Following the orders of the learned judge, the respective parties appeared before the land administrator who made a second award as set out above. It is undisputed that Orchard Circle was the applicant in the first JR application and they had not appealed against the decision of the learned judge and in fact taken part in the second land inquiry which was conducted pursuant to the Form D issued on 10 December 2001.

[15] Premised on those factual matrix, learned counsel for SILK, land administrator and the Government of Malaysia submit that Orchard Circle cannot now raise the issue of the lapsed Form D pursuant to s 8(4) of the LAA. Orchard Circle had, as submitted by learned counsel, the opportunity to appeal against the decision of the learned judge when he refused to grant a declaration that the acquisition exercise is null and void and had in fact remitted the land inquiry for further continued hearing of the same before the

land administrator.

[16] Whether or not the aforesaid contention ought to be sustained requires us to apply established principles of law of res judicata and estoppel.

[17] We first look at the doctrine of estoppel. The Federal Court in *Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565; [1997] 3 CLJ 305 discussed those principles in the context of litigation, at pp 583–586 (MLJ); pp 324–328 (CLJ), as follows:

> I now turn to consider the argument mounted upon the doctrine of estoppel ...
>
> In the context of litigation, it usually arises where a party to an action has at least two alternative and mutually exclusive courses open to him. If by words or conduct he elects to pursue one of them and thereby leads his opponent to believe that he has abandoned the other, he may, if the circumstances so warrant, be precluded from later changing course. Decisions upon the application of the doctrine to litigation are but mere illustrations of the broader proposition. Indeed this is true of all cases where the doctrine has been applied to other spheres of human activity.
>
> For present purposes, it is sufficient to draw from two such examples.
>
> In *Meng Leong Development Pte Ltd v Jip Hong Trading Co Pte Ltd* [1985] 1 MLJ 7; 1985 CLJ 8, the doctrine was applied to the following circumstances. The plaintiff, after having lodged a caveat, brought an action for specific performance of a contract for the sale of land. At first instance, he failed to obtain specific relief. He was, however, awarded damages for breach of contract. The defendant appealed to the Court of Appeal of Singapore for a reduction in the size of the award. It was open to the plaintiff to cross-appeal, but he chose not do so. Instead, he elected to pursue with execution of the award of damages. The defendant was able to obtain the plaintiff's agreement to withhold execution only upon securing the judgment sum in the hands of a banker upon fixed deposit. At the hearing of the appeal, the plaintiff requested for and obtained leave to cross appeal against the refusal of specific performance.
>
> The Court of Appeal, unaware of the arrangement that had been arrived at between the parties on the question of a stay, granted the leave sought, dismissed the defendant's appeal and allowed the plaintiff's cross-appeal. Upon the defendant's further appeal to the Privy Council, the Board, allowed the appeal and restored the order of the trial judge. The Board held that the plaintiff, by his conduct in calling for the damages awarded to him, had demonstrated that it was not pursuing its claim for specific performance. He was accordingly estopped from doing so before the Court of Appeal.
>
> The majority judgment of the Judicial Committee was delivered by Lord Templeman who said (at p 11 of the report):
>
> > In Spencer, Bower and Turner 'The Law relating to Estoppel by Representation' (3rd Edn, 1977), para 310 summarises the doctrine of election as applied to the law of estoppel in these terms:

> Where A, dealing with B, is confronted with two alternative and mutually exclusive courses of action in relation to such dealing, between which he may make his election, and A so conducts himself as reasonably to induce B to believe that he is intending definitely to adopt the one course, and definitely to reject or relinquish the other, and B in such belief alters his position to his detriment, A is precluded, as against B, from afterwards resorting to the course which he has thus deliberately declared his intention of rejecting. It is of the essence of election that the party electing shall be 'confronted' with two mutually exclusive courses of action between which he must, in fairness to the other party, make his choice.

In the present case the purchaser could not take the damages and obtain specific performance. By demanding and accepting the deposit of the damages the purchaser chose to adopt the order of the trial Judge and relinquished the right to appeal for that order to be set aside and for specific performance to be substituted. The vendor altered its position to its detriment by raising and paying $297,500 on 12 November 1981. The vendor has been deprived of that sum ever since. After the judgment of AP Rajah J the purchaser was indeed confronted with two alternative and mutually exclusive courses of action, namely, to enforce the award of damages or to seek to persuade the Court of Appeal to set aside the award of damages and to substitute the remedy of specific performance.

By procuring the payment of the damages of $297,500 the purchaser accepted the Judge's order. If the purchaser had served a notice of appeal seeking specific performance or had informed the vendor that the purchaser intended to seek an order for specific performance from the Court of Appeal, the vendor would have been able to refuse to place the damages on deposit and would have been entitled to renew and to succeed in an application for a stay of execution with regard to the damages pending the hearing of the purchaser's appeal seeking specific performance. Paragraph 322 of the cited work by Spencer, Bower and Turner relating to election in the conduct of litigation is in these terms:

> Where a litigant has taken the benefit, in whole or in part, of a decision in his favour, he is precluded from setting up in any subsequent proceedings between the same parties, by way of appeal or otherwise, that such decision was erroneous, or, though correct as to the part which was in his favour, was wrongly decided as to the residue.

Mr Nugee submitted that this statement is not justified by authority but it appears to be good law and good sense. Here the purchaser, by obtaining the deposit of the damages of $297,500.00 took the benefit of the decision in its favour made by AP Rajah J and thereby precluded the purchaser from arguing that his decision was erroneous.

The second authority is *Langdale & Anor v Danby* [1982] 1 WLR 1123, which concerned an application for summary judgment decreeing specific performance. At the hearing of the summons before the judge at first instance, the defendant expressly admitted that the no impropriety was alleged against the first plaintiff, who was a solicitor. The judge entered summary judgment. On appeal, the English

Court of Appeal admitted further evidence which in effect amounted to a withdrawal of the admission made before the judge. The Court of Appeal, having expressed its satisfaction that there was no material before the judge to merit a trial, held that there were triable issues upon the fresh evidence admitted before them. Leave to defend was accordingly given. The plaintiffs appealed to the House of Lords which allowed the appeal and restored the decree of specific performance granted by the judge.

In a speech in which the other members of the House concurred, Lord Bridge of Harwich said (at p 1135 of the report):

> My Lords, with all respect, I cannot agree with any of the reasons suggested for holding that the conduct of Mr Danby's case before Oliver J and in particular the admission that no impropriety was attributed to Mr Langdale did not estop Mr Danby from alleging, nearly two years later, that the judgment of Oliver J could be reversed on grounds which were not taken before Oliver J and which directly accused Mr Langdale of improper conduct as a solicitor. In this context, I confess I simply do not understand the distinctions sought to be drawn by Dunn LJ between the conduct of the case before Oliver J and Mr Danby's subsequent delaying tactics or between the grant of leave to appeal out of time and the decision of the appeal itself, or that drawn by Fox LJ between matter going to costs and matter going to substance.
>
> As I see it the direct result of the conduct of Mr Danby's case before Oliver J was to permit the Langdales to obtain summary judgment. They then spent nearly two years in time and a great deal of money in costs in the course of enforcing that judgment. True it is that part, but part only, of the costs so incurred could be and were set off against the balance of the purchase price of the cottage due to Mr Danby, probably Mr Danby's only significant resource. But now, if the Court of Appeal judgment were to stand, the Langdales would face a full scale trial against a legally aided defendant in which, though they succeeded, they would have little prospect of recovering any of their costs. Looking at this history in a common sense way, it seems to me beyond argument that the Langdales will have acted to their detriment, on the faith of the conduct of Mr Danby's case which enabled them to obtain summary judgment, by spending large sums to enforce that judgment, if they are now denied the benefit of it by allowing Mr Danby to set up a case which conflicts radically with the case presented on his behalf before Oliver J. Independently of any other ground I would, therefore, hold Mr Danby estopped from arguing the case on which he succeeded in the Court of Appeal.

With one qualification that I shall state in a moment, the passages above quoted — from the opinion of Lord Templeman in *Meng Leong*, and the speech of Lord Bridge in *Langdale* — reflect the consequences that flow upon an application of the doctrine of estoppel to the conduct of litigation. The qualification I make is this. The approach to the doctrine of estoppel, in particular to the requirement of there having to be 'a detriment', has, by the flow of authority that has come after the decisions in *Langdale* and *Meng Leong*, including the decision of this court in *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331; [1995] 4 CLJ 283, been re-stated in broader terms to accurately reflect the true nature of the doctrine.

Accordingly, the global question which a court must ask itself is this: is it just and equitable that the particular litigant (against whom the estoppel is raised) should succeed, given the totality of the facts and circumstances of the case? If the answer to that question is in the affirmative, estoppel does not bite: if the answer is in the negative, then it does.

[18] We find the above guidelines helpful as they concern the ramifications of choices made by litigants in the conduct of litigation, as in this case. As pointed out by learned counsel for SILK, land administrator and the Government of Malaysia, Orchard Circle could have very well appealed against the decision of the first JR application by the High Court on its refusal to void the acquisition exercise. Instead, Orchard Circle participated in the second land inquiry. In our view, the conduct of Orchard Circle gave rise to a situation where the doctrine of estoppel could be and should be applied.

[19] We are fully aware of the contention made by learned counsel for Orchard Circle and that is estoppel does not bite where there is a breach of the law in s 8(4) of the LAA. However, we are of the considered view that looking at the totality of the circumstances in this case, it would not be 'just and equitable' to allow Orchard Circle to ventilate this issue in the second JR application.

[20] As for the doctrine of res judicata, the law is established (see *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783) In the context of this case, the contention is premised on the fact that Form D which is dated 10 December 2001 being the crucial document in the whole scheme of things was never challenged by Orchard Circle until the second land inquiry. As alluded to earlier, Orchard Circle could have raised the lapsed Form D issue in the first JR application and also could have appealed against the orders of the learned judge in the first JR application. The plea of res judicata also of course applies not only to points which the court was required to form a view and pronounce a judgment but to every point which belong to the subject of litigation and which the parties exercising reasonable diligent, might have brought forward at the time (see *Henderson v Henderson* [1843–60] All ER Rep 378; (1843) 3 Hare 100; (1843) 67 ER 313).

[21] Applying the principles set out above, we sustain the contention of the application of the doctrine of res judicata to the circumstances in this case. With that we now move to the crucial issue of s 8(4) of the LAA.

[22] Section 8 of the LAA reads as follows:

(1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a

declaration in Form D shall be published in the Gazette.

(2) A copy of the list of lands referred to in paragraph 7(b), amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

(4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under subsection 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

(5) Where the declaration under subsection (1) has lapsed, subsections 35(2), (3) and (4) shall apply with the necessary modifications.

[23] The golden rule of interpretation in construing a statute is to ascertain the true intention of the Legislature and in doing that the courts are duty bound to adopt an approach that promotes the purpose or object underlying that statute. To ascertain the meaning of a clause in a statute, the whole statute must be looked at and not merely at the clause itself. Where the language of the words employed are clear and succinct giving rise to no ambiguity, the courts must interpret them as they are. However, when the literal meaning of the words employed in the legislation leads to absurdity, then the courts must adopt a purposive approach to the interpretation of legislation as demanded by s 17A of the Interpretation Acts 1948 and 1967 which provides that in construing the meaning of provisions in statute a construction which would promote the purpose or object underlying the Act shall be preferred to a construction that would not promote that purpose or object.

[24] In supporting the judgment of the learned judge, learned counsel for Orchard Circle fashioned her argument in terms of the constitutional right of landowners. This is how she put it:

> 59. Ensuring that the landowner receives adequate compensation is vital in land acquisition proceedings as this is a landowner's constitutional guarantee pursuant to art 13 of the Federal Constitution.
>
> 60. Article 13 states —
>
> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

60.1 The courts have held that the Land Acquisition Act is a special Act and therefore its provisions must be strictly adhered to otherwise the acquisition would not be in accordance with the law and a breach of art 13 of the Federal Constitution.

60.2 We submit that the provisions of the LAA must be strictly interpreted in favour of the landowner whose land is to be acquired so as to give meaning to the constitutional protection under art 13.

61. The purpose and intention of s 8(4) is therefore in line with art 13 as it is intended to ensure that the compensation received by the landowner is current and adequate.

[25] It was also submitted by learned counsel for Orchard Circle that the wordings in s 8(4) of the LAA are clear and leave no room for the court to exercise its discretion to ignore or extend the two-year period as the operative words used therein are 'shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the *Gazette*'. In support of the submission, learned counsel referred us to two cases, namely *Pengarah Tanah dan Galian Negeri Kedah & Anor v Emico Development Sdn Bhd* [2000] 1 MLJ 257 and *Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor* [2016] 1 MLJ 544; [2015] 3 CLJ 861.

[26] There is little doubt in our minds that the rationale and purpose of s 8(4) of the LAA is to ensure landowners whose lands are compulsorily acquired for public purpose are compensated adequately and quickly. As pointed out by learned counsel s 8(4) of the LAA was introduced by way of amendment in 1984 and came into force from 20 January 1984 in view of the sentiments expressed by the Federal Court in 1983 in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 at p 38 which reads as follows:

The collector may well have plenty of work and other duties to perform within the available time at his disposal, but he must consider not only the interests of the state of which he is an official, but also that of the land owners, whose land he is acquiring. ...

Failure to do so, resulting in the diminution of their interest, in our view amounts to an abuse of power, which entitles the land owners concerned to an order of certiorari. That the collector is required to make an inquiry without much delay is clearly shown in para 1(1) of the First Schedule of the Act itself. As this paragraph fixes the market value of the land as on the date of the declaration it is implicit that the collector is under a duty to hold the inquiry within such time as would not render the market value of the land at the time of the award to be substantially different from that prevailing on that date of the declaration. If the delay in holding the enquiry in this case is allowed, para 1(1) of the First Schedule would become an engine or a purveyor of injustice. Surely this was not the intention of the Legislature. ... As demonstrated in this case, the collector's delay in holding the inquiry under s 10 of the Act seven years after the declaration of acquisition resulting in an inadequate compensation to the respondent brings the inquiry and the award

A outside the purview and scope of the Act. Such delay tantamounts to an abuse of power and renders the inquiry and subsequent proceedings null and void.

B **[27]** With what we have stated above foremost in our minds, we now deliberate on the interpretation that should be ascribed to s 8(4) of the LAA.

[28] If one looks at s 8(4) of the LAA, it talks of a lapsed Form D in a situation when 'the Land Administrator has not made an award under subsection 14(1) within the said period of two years'. This is also reflective of the sentiments expressed by the Federal Court in *Ong Gaik Kee* which talks of C the need of the land collector to hear compensation claims within 'a reasonable time' or 'as soon as possible'. Thus, one can say that the emphasis of s 8(4) of the LAA is to ensure that the land administrator perform his or her duty expeditiously. It does not mention or cater for a situation where the litigants, as D in this case, seek redress in the court of law which of course took more than two years to deal with the matter. Parliament of course could have fixed a time period for the courts to dispose of such matter but they did not do so.

[29] Taking that into consideration together with other provisions of the E LAA, we are of the view that s 8(4) would be complied with when there is an award from the land administrator within the two-year period from the date Form D was *gazetted*. Once that is complied with, there is no question of the lapsing of Form D. Thereafter, whoever is not happy with the award, s 37 of the LAA kicks in so to speak.

F **[30]** Section 37 of the LAA is a part of the statutory mechanism for ascertaining adequate compensation for compulsorily acquired lands and it reads as follows:

G (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to —

H (a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

I (2) Where the total amount awarded in compensation in respect of any interest in any scheduled land does not exceed three thousand ringgit the written award of the Land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof.

(3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to section 3, shall be deemed to be a person interested in any scheduled land under subsection (1), and may make objections on any of the grounds specified in subsection (1).

[31] One principle of constructing provisions of statute is that due regard must be given to other provisions of the Act and in this case, s 8(4) of the LAA must be read together with s 37 of the LAA. And in doing so, we agree with learned counsel for SILK, land administrator and the Government of Malaysia that s 8(4) of the LAA in this case had been complied with when the first award was handed down on 24 December 2002 which was well within two years from the Form D dated 10 December 2001.

[32] Not to interpret s 8(4) of the LAA in the manner as we have set out above in our view would lead to mischiefs as set out by learned counsel for SILK in his submission. The main mischief would be that the purpose of s 8(4) of the LAA of a speedy award by the land administrator would be defeated with legal challenges in the court of law where cases are numerous and the disposal timeline of cases is not within the control of the land administrator. Hence it could be said our interpretation of s 8(4) of the LAA is consistent and reflect the intent of the Parliament. We therefore agree with the learned judge in the first JR application when he did not order for the re-issuance and *gazetting* of Form D but instead directed the second land inquiry to be held premised on that Form D.

[33] The learned judge in coming to his decision relied on the case of this court, namely, *Pengarah Tanah dan Galian Negeri Kedah & Anor v Emico Development Sdn Bhd* [2000] 1 MLJ 257. Having read the grounds of that decision in detail, we do not blame the learned judge as he would be bound by the principle of law expounded by this court which appears to be saying that a final award from the land administrator must be handed down within the two-year period prescribed in s 8(4) of the LAA irrespective of delays caused by legal challenges in courts. However, we do not wish to comment on the interpretation ascribed to by another panel of this court except to say that the factual matrix of this case is completely different to the factual matrix in that case in that the High Court of Shah Alam in this case did not come into the picture until some seven years later. On that difference, we say that *Emico* is distinguishable from this case.

[34] As for the case of *Kijal Resort* relied on by respective counsel, the legal principle discussed there in the Federal Court is only of general application and

A the factual matrix there is also different to this case. Hence, it does not bind us in any way.

DAMAGES ISSUE

B **[35]** This issue emanates from Appeal 131 where Orchard Circle's complaint is the refusal of the learned judge to award damages. In view of our opinion on s 8(4) of the LAA, we find it unnecessary to deliberate on this issue.

CONCLUSION

C

[36] This is simply a case of constructing a provision in a statute and in executing that task we had applied the trite principles of law on construction of statute and gave it a meaning reflecting both the intent of Parliament and the purpose of the provision without inflicting any damage to the language used in s 8(4) of the LAA.

D

[37] For reasons stated above, we dismiss Appeal 131 and allow the Appeals 114, 121, and 122 and make the following orders:

E

(a) the High Court Order dated 7 March 2016 be set aside;

(b) an order that Form D dated 10 December 2001 and all the acquisition proceedings therefrom are valid; and

F

(c) an order that all objections taken in connection with the land administrator's findings in the second land inquiry with regard to compensation payable and the issue of surrender of the lands be addressed by the parties at the land reference proceedings; and

(d) costs as follows:

G

(i) Appeal 114 — RM30,000 for here and below and subject to allocatur fees;

(ii) Appeal 121 — RM10,000 for here and below and subject to allocatur fees;

H

(iii) Appeal 122 — RM10,000 for here and below and subject to allocatur fees; and

(iv) Appeal 131 — no order as to costs; and

I

(e) deposit to be refunded to the appellants where applicable.

Order accordingly.

Reported by Ashok Kumar